

EXHIBIT 1

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Page 1	Page 3
1 IN THE UNITED STATES DISTRICT COURT	1 I N D E X
2 MIDDLE DISTRICT OF ALABAMA	2
3 EASTERN DIVISION	3 WITNESS: RONNIE GILES
4	4
5 CASE NUMBER: 3:06-CV-528-WKW	5 DIRECT EXAMINATION BY MS. CREVELING.....5
6	6
7 RONNIE GILES,	7 CERTIFICATE PAGE.....140
8 Plaintiff,	8
9 VS.	9
10	10 E X H I B I T S
11 MASTERBRAND CABINETS, INC.,	11
12 Defendants.	12 DEFENDANT'S 1.....42
13 *****	13 DEFENDANT'S 2.....52
14	14 DEFENDANT'S 3.....82
15 S T I P U L A T I O N	15 DEFENDANT'S 4.....85
16	16 DEFENDANT'S 5.....91
17 IT IS STIPULATED AND AGREED by and	17 DEFENDANT'S 6.....94
18 between the parties, through their respective	18 DEFENDANT'S 7.....94
19 counsel, that the deposition of RONNIE GILES	19 DEFENDANT'S 8.....124
20 may be taken before Kelly Gray, CSR., at the law	20 DEFENDANT'S 9.....125
21 offices of Laney & Foster, P.C., Two Perimeter	21
22 Park South, Suite 404 East, Birmingham, Alabama	22
23 35243, on the 5th day of April, 2007.	23
Page 2	Page 4
1 IT IS FURTHER STIPULATED AND AGREED that	1 A-P-P-E-A-R-A-N-C-E-S:
2 the signature to and the reading of the	2
3 deposition by the witness is hereby waived, the	3 For the Plaintiff: ARENDALL & ASSOCIATES
4 deposition to have the same force and effect as	4 By: Mr. Allen D. Arnold
5 if full compliance had been had with all laws	5 2018 Morris Avenue
6 and rules of Court relating to the taking of	6 Birmingham, AL 35203
7 depositions.	7
8 IT IS FURTHER STIPULATED AND AGREED that	8
9 it shall not be necessary for any objections to	9 For the Defendant: BAKER & DANIELS, LLP
10 be made by counsel to any questions except as to	10 By: Ms. Kelly Creveling
11 form or leading questions, and that counsel for	11 300 N. Meridian Street
12 the parties may make objections and assign	12 Suite 2700
13 grounds at the time of the trial, or at the time	13 Indianapolis, IN 46204
14 said deposition is offered in evidence, or prior	14
15 thereto.	15
16 IT IS FURTHER STIPULATED AND AGREED that	16
17 the notice of filing of the deposition by the	17
18 Court Reporter is waived.	18
19	19
20	20
21	21
22	22
23	23

1 (Pages 1 to 4)

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Page 5	Page 7
<p>1 I, KELLY GRAY, a Court Reporter of</p> <p>2 Birmingham, Alabama, acting as Commissioner,</p> <p>3 certify that on this date, as provided by the</p> <p>4 Alabama Rules of Civil Procedure and the</p> <p>5 foregoing stipulations of counsel, there came</p> <p>6 before me at the Law Offices of LANEY & FOSTER,</p> <p>7 P.C., Two Perimeter Park South, Suite 404 East,</p> <p>8 Birmingham, Alabama 35243, beginning at 10:00</p> <p>9 a.m., RONNIE GILES, witness in the above cause,</p> <p>10 for oral examination, whereupon the following</p> <p>11 proceedings were had:</p> <p>12</p> <p>13 RONNIE GILES</p> <p>14 a witness, being produced, sworn and examined on</p> <p>15 behalf of the defendant, testified as follows:</p> <p>16</p> <p>17 BY THE REPORTER: Usual stipulations?</p> <p>18 BY MS. CREVELING: Yeah.</p> <p>19 BY MR. ARNOLD: Yes.</p> <p>20</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MS. CREVELING:</p> <p>23 Q Mr. Giles, we've met. My name's Kelly</p>	<p>1 A Okay.</p> <p>2 Q Okay. If at anytime you don't understand</p> <p>3 my question or you don't hear my question, let</p> <p>4 me know. I would be happy to repeat it or</p> <p>5 rephrase it for you. However, if you answer the</p> <p>6 question, I'm going to assume that you</p> <p>7 understood the question, okay?</p> <p>8 A Okay.</p> <p>9 Q All right. Well, let's go ahead and get</p> <p>10 started then. If you could give me your full</p> <p>11 name, please.</p> <p>12 A Ronnie Giles.</p> <p>13 Q What's your date of birth, sir?</p> <p>14 A March 29, 1959.</p> <p>15 Q And where are you currently living?</p> <p>16 A 3006 Pheasant Avenue.</p> <p>17 Q All right.</p> <p>18 A Opelika, Alabama.</p> <p>19 Q How long have you been at that address?</p> <p>20 A About four years and nine months,</p> <p>21 approximately.</p> <p>22 Q Does anyone else live at that address</p> <p>23 with you?</p>
Page 6	Page 8
<p>1 Creveling. I'm here today representing</p> <p>2 MasterBrand Cabinets. And before we get</p> <p>3 started, I just want to go over a few items that</p> <p>4 will make today's deposition flow much easier.</p> <p>5 And your attorney may have already discussed</p> <p>6 them you, but I find some of them are hard for</p> <p>7 everybody to remember, so I'm going to go ahead</p> <p>8 and cover them again this morning. I think the</p> <p>9 most important -- I guess two of the most</p> <p>10 important are that you answer verbally. So</p> <p>11 "yes" or "no" or whatever narrative explanation</p> <p>12 you have rather than shaking the head or saying</p> <p>13 "uh-huh" or "huh-uh." Because as we're sitting</p> <p>14 here today we know -- we might know what each</p> <p>15 other means, but it doesn't translate very well</p> <p>16 into our transcript. And then if you would</p> <p>17 please allow me to finish my question before you</p> <p>18 begin your answer. If we're talking over each</p> <p>19 other, we'll probably get the Court Reporter</p> <p>20 upset and we'll hear from him. So again, if you</p> <p>21 would, just follow that rule. I think it would</p> <p>22 make our deposition today go much easier, all</p> <p>23 right?</p>	<p>1 A Yes.</p> <p>2 Q Who does?</p> <p>3 A My wife and son.</p> <p>4 Q Okay. What's your wife's name?</p> <p>5 A Lucretia Giles.</p> <p>6 Q And your son's name?</p> <p>7 A Rondez Giles.</p> <p>8 Q Can you spell that for me, please?</p> <p>9 A R-O-N-D-E-Z.</p> <p>10 Q How old is Rondez?</p> <p>11 A Twelve.</p> <p>12 Q All right. Can you just give me a snap</p> <p>13 shot of your educational background, please?</p> <p>14 A I finished high school in '77.</p> <p>15 Q Any college-type courses or training</p> <p>16 courses post-high school?</p> <p>17 A One year at Alabama State University.</p> <p>18 Q What did you study at Alabama State?</p> <p>19 A I was going into business.</p> <p>20 Q Any other courses?</p> <p>21 A No.</p> <p>22 Q Okay. Have you ever been involved in any</p> <p>23 other lawsuits besides this one?</p>

2 (Pages 5 to 8)

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Page 9	Page 11
<p>1 A No.</p> <p>2 Q How about charges filed with any type of</p> <p>3 federal or state agencies?</p> <p>4 A Have I filed any?</p> <p>5 Q Yes, sir.</p> <p>6 A No.</p> <p>7 Q Okay. Have you ever filed for</p> <p>8 bankruptcy?</p> <p>9 A Yes.</p> <p>10 Q When was that?</p> <p>11 A I'm not sure.</p> <p>12 Q Just roughly by year. You don't need to</p> <p>13 give me an exact date.</p> <p>14 A I would say 1988.</p> <p>15 Q Were you in Alabama at the time it was</p> <p>16 filed?</p> <p>17 A Yes.</p> <p>18 Q Are you currently employed?</p> <p>19 A Yes.</p> <p>20 Q Where are you currently employed?</p> <p>21 A Weidmann Plastics.</p> <p>22 Q Where is that located?</p> <p>23 A Auburn, Alabama.</p>	<p>1 A No.</p> <p>2 Q What do you do at Weidmann Plastics?</p> <p>3 A I put their plastic parts together.</p> <p>4 Q What kind of things do they make?</p> <p>5 A They make -- it's hard to say.</p> <p>6 Q All right.</p> <p>7 A They make what they call at Weidmann, B</p> <p>8 Pillars.</p> <p>9 Q B pillars?</p> <p>10 A They use that section to go on car doors</p> <p>11 that run in the middle plastic part on the</p> <p>12 inside of the car.</p> <p>13 Q Okay. How did you find the job at</p> <p>14 Weidmann?</p> <p>15 A Friends.</p> <p>16 Q Friends referred you over there?</p> <p>17 A They talked about the former personnel</p> <p>18 manager from MasterBrand was there.</p> <p>19 Q Who was that?</p> <p>20 A Jimmy Allen.</p> <p>21 Q So there's somebody -- Jim Allen was the</p> <p>22 H.R. manager at MasterBrand at one point?</p> <p>23 A Yes.</p>
Page 10	Page 12
<p>1 Q How long have you worked for them?</p> <p>2 A One year and just under two months.</p> <p>3 Yeah, two months.</p> <p>4 Q So let's see, if you were terminated from</p> <p>5 MasterBrand in January of 2006, you began with</p> <p>6 Weidmann pretty quickly after that?</p> <p>7 A In February.</p> <p>8 BY MR. ARNOLD: Object to form.</p> <p>9 Q (continued by Ms. Creveling) I'm sorry.</p> <p>10 You can go ahead and answer.</p> <p>11 A In February.</p> <p>12 Q How long between when you were terminated</p> <p>13 from MasterBrand and started --</p> <p>14 A One month.</p> <p>15 Q Did you collect unemployment in that one</p> <p>16 month?</p> <p>17 A No.</p> <p>18 Q Did you work anywhere else in that one</p> <p>19 month?</p> <p>20 A I worked at Area Realty.</p> <p>21 Q Okay. Any other employers at all,</p> <p>22 besides Area Realty and Weidmann Plastics, after</p> <p>23 leaving MasterBrand Cabinets?</p>	<p>1 Q Who then went over to Weidmann Plastics?</p> <p>2 A Yes.</p> <p>3 Q Okay. And did they -- do they like Mr.</p> <p>4 Allen? I mean, was that a favorable thing or is</p> <p>5 that an unfavorable recommendation?</p> <p>6 A Favorable.</p> <p>7 Q Okay. And is Mr. Allen still at Weidmann</p> <p>8 Plastics?</p> <p>9 A Yes.</p> <p>10 Q What shift do you work there?</p> <p>11 A Third shift.</p> <p>12 Q Is that your preferred shift?</p> <p>13 A Yes.</p> <p>14 Q How much do you make there per hour?</p> <p>15 A \$12.50.</p> <p>16 Q Is there a shift differential?</p> <p>17 A Yes.</p> <p>18 Q What do you get for the shift</p> <p>19 differential?</p> <p>20 A Fifty cents.</p> <p>21 Q Per hour; is that right?</p> <p>22 A Yes.</p> <p>23 Q Okay. What benefits do you have?</p>

3 (Pages 9 to 12)

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Page 13	Page 15
<p>1 A Medical and dental.</p> <p>2 Q Do you cover your whole family on those</p> <p>3 benefits?</p> <p>4 A Yes.</p> <p>5 Q Do you know what you pay for those</p> <p>6 coverages, approximately?</p> <p>7 A Approximately, \$33.00 a week.</p> <p>8 Q Combined?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 A Approximately.</p> <p>12 Q Okay. When you were at MasterBrand, did</p> <p>13 you also have coverage for your whole family</p> <p>14 there?</p> <p>15 A Yes.</p> <p>16 Q Do you have a 401-K with Weidmann?</p> <p>17 A Weidmann supplies a 401-K.</p> <p>18 Q And do you participate?</p> <p>19 A I don't --</p> <p>20 Q Okay.</p> <p>21 A -- I don't have money taken out. They</p> <p>22 just have one.</p> <p>23 Q Do they contribute for you?</p>	<p>1 A \$10,000.00.</p> <p>2 Q For --</p> <p>3 A My son.</p> <p>4 Q -- your son? And any for your wife?</p> <p>5 A No.</p> <p>6 Q Did you have life insurance -- similar</p> <p>7 life insurance options available at MasterBrand?</p> <p>8 A Yes.</p> <p>9 Q Do you recall what life insurance you had</p> <p>10 at MBCI? I'm sorry. At MasterBrand?</p> <p>11 A What --</p> <p>12 Q What life insurance coverage you</p> <p>13 elected --</p> <p>14 A Amount?</p> <p>15 Q -- while at MasterBrand? Yes.</p> <p>16 A I'm not sure what the amount was.</p> <p>17 Q Are you covered by a short-term</p> <p>18 disability policy at Weidmann?</p> <p>19 A Yes.</p> <p>20 Q Do you have to pay for that coverage?</p> <p>21 A No.</p> <p>22 Q Are you covered by a long-term disability</p> <p>23 policy at Weidmann?</p>
Page 14	Page 16
<p>1 A Yes.</p> <p>2 Q Okay. So Weidmann contributes, but you</p> <p>3 don't contribute personally; is that correct?</p> <p>4 A Right.</p> <p>5 Q If you wanted to, would you be able to</p> <p>6 make contributions? Do you have the option of</p> <p>7 making personal contributions?</p> <p>8 A I do have the option.</p> <p>9 Q Any other retirement-type benefits,</p> <p>10 pension or anything else?</p> <p>11 A From Weidmann?</p> <p>12 Q Yes.</p> <p>13 A I'm not sure.</p> <p>14 Q Do you have life insurance there?</p> <p>15 A Yes.</p> <p>16 Q In what amount?</p> <p>17 A \$50,000.00.</p> <p>18 Q How about for any of your dependents; do</p> <p>19 they offer life insurance for your dependents?</p> <p>20 A They do.</p> <p>21 Q And have you elected any?</p> <p>22 A Yes.</p> <p>23 Q Okay. And what amount?</p>	<p>1 A Not to my knowledge.</p> <p>2 Q Any other benefits we haven't discussed</p> <p>3 that are available to you at Weidmann?</p> <p>4 A Not that I know of.</p> <p>5 Q Okay. Presumably you have vacation time</p> <p>6 through them?</p> <p>7 A Through Weidmann?</p> <p>8 Q Through Weidmann.</p> <p>9 A Yes.</p> <p>10 Q How much do you get per year?</p> <p>11 A Two weeks.</p> <p>12 Q Is that paid?</p> <p>13 A Yes.</p> <p>14 Q Okay. Let's talk a little bit about</p> <p>15 Area Realty. How long have you been working for</p> <p>16 Area Realty?</p> <p>17 A Approximately, three years and eleven</p> <p>18 months.</p> <p>19 Q Have you worked with any other real</p> <p>20 estate companies, other than Area Realty?</p> <p>21 A Yes.</p> <p>22 Q Tell me who else you've worked for.</p> <p>23 A Century 21.</p>

4 (Pages 13 to 16)

Page 17	Page 19
<p>1 Q In what city?</p> <p>2 A Opelika.</p> <p>3 Q When did you work for Century 21?</p> <p>4 A '98 to 2000.</p> <p>5 Q Is there more than one Century 21 office</p> <p>6 in Opelika?</p> <p>7 A Not at any one time.</p> <p>8 Q Okay. Do you recall the address for that</p> <p>9 Century 21 office where you worked?</p> <p>10 A No.</p> <p>11 Q How long have you held a real estate</p> <p>12 license?</p> <p>13 A Since 1998.</p> <p>14 Q What's your relationship with Area</p> <p>15 Realty? Are you an employee; are you an</p> <p>16 independent contractor?</p> <p>17 A Independent contractor.</p> <p>18 Q Do you have any type of independent</p> <p>19 contractor agreement with them?</p> <p>20 A Not that I know of, no.</p> <p>21 Q Okay. How is your compensation set; how</p> <p>22 does that work?</p> <p>23 A We work off of -- we get paid</p>	<p>1 \$10,000.00, it goes up five percent each.</p> <p>2 Q Is that your current agreement with Area</p> <p>3 Realty?</p> <p>4 A Yes.</p> <p>5 Q Has it changed over the years?</p> <p>6 A No.</p> <p>7 Q No?</p> <p>8 A No.</p> <p>9 Q Okay. Do you work full-time at Weidmann?</p> <p>10 A Yes.</p> <p>11 Q How many hours?</p> <p>12 A Forty.</p> <p>13 Q Do you get overtime?</p> <p>14 A No.</p> <p>15 Q How many hours per week would you say you</p> <p>16 work in the real estate business?</p> <p>17 A I'd say approximately twenty-five.</p> <p>18 Q And that's twenty-five hours per week</p> <p>19 currently for real estate-related items?</p> <p>20 A Yes.</p> <p>21 Q Let's go back to 2005 when you were still</p> <p>22 at MasterBrand. Roughly, how many hours per</p> <p>23 week then would you say you were working in real</p>
Page 18	Page 20
<p>1 commissions.</p> <p>2 Q Are there any written documents that</p> <p>3 describe how the commissions will be paid?</p> <p>4 A No.</p> <p>5 Q How do you know what the structure's</p> <p>6 going to be?</p> <p>7 A I talk with the broker.</p> <p>8 Q All right.</p> <p>9 A We discussed that when she took me on.</p> <p>10 Q Who's the broker?</p> <p>11 A Iris Hendricks.</p> <p>12 Q What's your agreement with Ms. Hendricks</p> <p>13 regarding commissions?</p> <p>14 A Sixty percent for selling an office</p> <p>15 listing; fifty-five percent for selling any</p> <p>16 other listing.</p> <p>17 Q I'm sorry. Sixty percent for an office</p> <p>18 listing, and what was the percent for any other?</p> <p>19 A Fifty-five.</p> <p>20 Q All right.</p> <p>21 A And that's initially.</p> <p>22 Q Okay.</p> <p>23 A It goes up. Every time you make</p>	<p>1 estate?</p> <p>2 A About twenty-five.</p> <p>3 Q Okay. What shift did you work at MBCI?</p> <p>4 A First.</p> <p>5 Q Do you have any benefits at all available</p> <p>6 through Area Realty?</p> <p>7 A No.</p> <p>8 Q Do you have any agreements as to how many</p> <p>9 hours per week you will work for Area Realty?</p> <p>10 A No.</p> <p>11 Q That twenty-five hours that you work per</p> <p>12 week in real estate, can you describe for me</p> <p>13 when you fit those hours in?</p> <p>14 A You're talking about right now,</p> <p>15 currently?</p> <p>16 Q Yes.</p> <p>17 A Usually on weekends, I work -- usually I</p> <p>18 wake up about -- well, it varies. It's hard to</p> <p>19 sleep in the daytime. I wake up sometimes at</p> <p>20 10:30, 11:00. Then I start returning phone</p> <p>21 calls and making showings.</p> <p>22 Q Okay. Do you do any during the week?</p> <p>23 A Yes.</p>

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Page 21	Page 23
<p>1 Q Okay.</p> <p>2 A That's not waking up on the weekends. I</p> <p>3 don't work weekends at Weidmann.</p> <p>4 Q Okay.</p> <p>5 A That was during the week.</p> <p>6 Q All right.</p> <p>7 A I wake up about 11:00, 10:30 or 11:00,</p> <p>8 and begin doing real estate through the week.</p> <p>9 Q I got you. Okay. So your forty hours</p> <p>10 that you work at Weidmann, what days of the week</p> <p>11 is that?</p> <p>12 A Well, they consider it Monday through</p> <p>13 Friday even though you start work Sunday night</p> <p>14 at 11:00.</p> <p>15 Q Okay. So you do some real estate work</p> <p>16 during the week, as you've described for me. Do</p> <p>17 you do any on the weekends, as well?</p> <p>18 A Yes.</p> <p>19 Q Okay. Are you responsible for generating</p> <p>20 your own listings?</p> <p>21 A Yes.</p> <p>22 Q If I wanted to see what listings you had,</p> <p>23 would that be in a newspaper somewhere in</p>	<p>1 Q What does she do for Wal-Mart?</p> <p>2 A She works as a customer service manager.</p> <p>3 Q Let's go back to the time when you were</p> <p>4 employed at MBCI, and tell me how you fit your</p> <p>5 real estate activities into the week.</p> <p>6 A Well, the normal work hours were 5:00 to</p> <p>7 1:30.</p> <p>8 Q Is that 5:00 a.m. or 5:00 p.m.?</p> <p>9 A 5:00 a.m.</p> <p>10 Q 5:00 a.m. to 1:30 p.m. was your regular</p> <p>11 shift?</p> <p>12 A Yes.</p> <p>13 Q Okay. Is that considered first shift?</p> <p>14 A Yes.</p> <p>15 Q Did you work overtime?</p> <p>16 A Sometimes.</p> <p>17 Q What was your job title there?</p> <p>18 A Material handler.</p> <p>19 Q So you worked 5:00 to 1:30 at</p> <p>20 MasterBrand, and then tell me when you would fit</p> <p>21 in your real estate activities.</p> <p>22 A I would start as soon as I got home from</p> <p>23 work.</p>
Page 22	Page 24
<p>1 Opelika or Auburn? Where would I find those</p> <p>2 things?</p> <p>3 A At all of them.</p> <p>4 Q Some of them; a sampling of them?</p> <p>5 A The broker advertises on the weekends,</p> <p>6 the Sunday paper.</p> <p>7 Q Okay. Do you do any advertising</p> <p>8 yourself?</p> <p>9 A Yes.</p> <p>10 Q Where do you advertise?</p> <p>11 A Valley Times. I've done some in the</p> <p>12 Opelika area.</p> <p>13 Q What Sunday paper does the broker</p> <p>14 advertise in?</p> <p>15 A Opelika and Auburn; Opelika/Auburn News.</p> <p>16 Q Other than your work at Weidmann and for</p> <p>17 Area Realty, do you have any other sources of</p> <p>18 income?</p> <p>19 A No.</p> <p>20 Q Does your wife work?</p> <p>21 A Yes.</p> <p>22 Q Where does she work?</p> <p>23 A Wal-Mart.</p>	<p>1 Q Okay.</p> <p>2 A I got off at 1:30.</p> <p>3 Q Now, I assume you have closings?</p> <p>4 A Yes.</p> <p>5 Q And do you have to attend those closings?</p> <p>6 A I didn't attend all of them, no.</p> <p>7 Q Okay. About how many, on average,</p> <p>8 percentage-wise, of your closings would you say</p> <p>9 you attend?</p> <p>10 A At that time?</p> <p>11 Q Yes.</p> <p>12 A Ninety-five.</p> <p>13 Q Ninety-five percent you would attend?</p> <p>14 A Yeah.</p> <p>15 Q Where would the closings typically be</p> <p>16 held at that time?</p> <p>17 A Usually at an attorney's office.</p> <p>18 Q Okay.</p> <p>19 A Various --</p> <p>20 Q Does that depend on just the buyers and</p> <p>21 sellers?</p> <p>22 A Right.</p> <p>23 Q Okay. When did the closings typically</p>

6 (Pages 21 to 24)

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Page 25	Page 27
<p>1 take place, in terms of time of day?</p> <p>2 A Most of them after lunch --</p> <p>3 Q All right.</p> <p>4 A -- afternoon.</p> <p>5 Q Did you keep any records of the closings</p> <p>6 that you attended?</p> <p>7 A No.</p> <p>8 Q Did anyone, to your knowledge?</p> <p>9 A No.</p> <p>10 Q Are there any records that would reflect</p> <p>11 the properties that you sold in 2005, for</p> <p>12 example?</p> <p>13 A On the system, it's going to show some of</p> <p>14 them, but --</p> <p>15 Q I'm sorry. What system?</p> <p>16 A MLS.</p> <p>17 Q I'm sorry?</p> <p>18 A MLS, Multiple Listings.</p> <p>19 Q I'm sorry. Did I interrupt you? Go</p> <p>20 ahead.</p> <p>21 A Multiple Listings.</p> <p>22 Q Okay. Who maintains that Multiple</p> <p>23 Listing service?</p>	<p>1 A In the way of contracts and closing</p> <p>2 documents --</p> <p>3 Q All right.</p> <p>4 A -- and disclosures.</p> <p>5 Q Were there any type of worksheets or</p> <p>6 logs, for lack of a better word, that you kept</p> <p>7 so that you could demonstrate what commissions</p> <p>8 you were entitled to?</p> <p>9 A Did I keep a log?</p> <p>10 Q Yes.</p> <p>11 A No.</p> <p>12 Q Okay. Did Area Realty?</p> <p>13 A Yes.</p> <p>14 Q Okay. Tell me about that. I mean, I</p> <p>15 guess I'm curious if you're out selling</p> <p>16 properties and you're going to get a commission</p> <p>17 on that, what type of documents are created so</p> <p>18 that at the end of the day you and Ms. Hendricks</p> <p>19 can sit down and say, "I'm owed 'X' amount of</p> <p>20 dollars?"</p> <p>21 A I'm not sure of the name of the document.</p> <p>22 She just keeps -- she has to keep up with</p> <p>23 everything and she does.</p>
Page 26	Page 28
<p>1 A The County Association of Realtors.</p> <p>2 Q And is that listing available to the</p> <p>3 public?</p> <p>4 A What do you mean?</p> <p>5 Q If I wanted to see what properties you</p> <p>6 sold in '05, would I be able to obtain that</p> <p>7 information from MLS just as a member of the</p> <p>8 public?</p> <p>9 A I'm not sure.</p> <p>10 Q Okay. Is that an internet-based service</p> <p>11 or what is it?</p> <p>12 A It is internet-based.</p> <p>13 Q Okay. Any other place where you think</p> <p>14 records would be maintained on the properties</p> <p>15 that you sold in 2005?</p> <p>16 A Area Realty.</p> <p>17 Q Ms. Hendricks would have some of that</p> <p>18 information, you think?</p> <p>19 A Yes.</p> <p>20 Q Okay. What type of records would Area</p> <p>21 Realty maintain with respect to what you sold?</p> <p>22 A What kind of records?</p> <p>23 Q Yes.</p>	<p>1 Q Okay. What's the process, though? So if</p> <p>2 you go out and you sell a property, what's the</p> <p>3 process; how do you notify Area Realty and what</p> <p>4 happens?</p> <p>5 A When it comes under contract, we put it</p> <p>6 in -- as under contract or pending in MLS.</p> <p>7 Q All right.</p> <p>8 A And put the file in the pending files.</p> <p>9 We either tell her or she sees them in the</p> <p>10 pendings when she comes to the office.</p> <p>11 Q Okay. And can you describe for me,</p> <p>12 although you might not know the name of it, what</p> <p>13 type of document or list she maintains so that</p> <p>14 she knows how much she owes each person?</p> <p>15 A I don't know the name.</p> <p>16 Q I know you don't know the name, but can</p> <p>17 you -- is it a -- is it in the computer; is it a</p> <p>18 big list; can you describe for me what it is?</p> <p>19 BY MR. ARNOLD: Object to form.</p> <p>20 A I don't know if it's on a computer or</p> <p>21 not. I just know that it's -- she keeps a list.</p> <p>22 Q (continued by Ms. Creveling) Okay. And</p> <p>23 you trust her to keep that accurately?</p>

7 (Pages 25 to 28)

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Page 29	Page 31
<p>1 BY MR. ARNOLD: Object to form.</p> <p>2 A Yes.</p> <p>3 Q (continued by Ms. Creveling) Okay. Did</p> <p>4 you ever miss time from work at MasterBrand to</p> <p>5 deal with your real estate activities?</p> <p>6 A My own real estate.</p> <p>7 Q Meaning what?</p> <p>8 A I own real estate. I had to leave.</p> <p>9 Q Okay. What real estate do you own?</p> <p>10 A I own an interest in 2723 Edwards Road.</p> <p>11 Q I'm sorry. Which road?</p> <p>12 A Edwards.</p> <p>13 Q Edwards Road? What city is that in?</p> <p>14 A Opelika.</p> <p>15 Q What type of property is that?</p> <p>16 A A single family.</p> <p>17 Q And any other property that you own?</p> <p>18 A Besides where I live?</p> <p>19 Q Yes.</p> <p>20 A No.</p> <p>21 Q Okay. So if I understand you, you would</p> <p>22 have to miss work on occasion from MasterBrand</p> <p>23 to deal with the Edwards Road property issues?</p>	<p>1 A I'm not -- I'm really not sure on those</p> <p>2 years, but the other owner was supposed to buy</p> <p>3 it, and I've been waiting and waiting.</p> <p>4 Q Anything that you have that would allow</p> <p>5 you to pinpoint more precisely when that</p> <p>6 occurred?</p> <p>7 A Anything that I have?</p> <p>8 Q Yeah.</p> <p>9 A No.</p> <p>10 Q When you say you had to clean it up, was</p> <p>11 there any type of action by the City or any</p> <p>12 formal action?</p> <p>13 A Yes, the City notified me that it needed</p> <p>14 to be cleaned up.</p> <p>15 Q Is there a particular office or agency</p> <p>16 from the City that notified you?</p> <p>17 A I don't know what the name of it was.</p> <p>18 Q Let's talk a little bit about your work</p> <p>19 at MBCI. I think you told me you were a</p> <p>20 material handler at the time you were</p> <p>21 terminated; is that right?</p> <p>22 A Yes.</p> <p>23 Q And you were on first shift?</p>
Page 30	Page 32
<p>1 A Not on occasion. It was this particular</p> <p>2 time; something came up.</p> <p>3 Q Okay. What particular time was that?</p> <p>4 A When the person that owned the other</p> <p>5 interest -- well, some of the owners --</p> <p>6 Q Uh-huh.</p> <p>7 A -- it's their property -- they left junk</p> <p>8 cars on that property, but their name didn't</p> <p>9 show up, just mine; and I had to get it cleaned</p> <p>10 up.</p> <p>11 Q Okay. Roughly, when did that occur?</p> <p>12 A I think two years ago.</p> <p>13 Q Okay. Let's see, that would put us in</p> <p>14 '05 sometime?</p> <p>15 A Yes.</p> <p>16 Q Okay. Do you remember what part of the</p> <p>17 year in '05?</p> <p>18 A It was the second half of the year.</p> <p>19 Q Okay. Anything that would allow you --</p> <p>20 any documents you have that would allow you to</p> <p>21 pinpoint when that was more specifically?</p> <p>22 A It may have been three years.</p> <p>23 Q Okay.</p>	<p>1 A Yes.</p> <p>2 Q Who was your supervisor at the time of</p> <p>3 your termination?</p> <p>4 A John Oleinick.</p> <p>5 Q Roughly, how long would you say Mr.</p> <p>6 Oleinick had been your supervisor?</p> <p>7 A I'm not sure.</p> <p>8 Q Can you give me an approximation?</p> <p>9 A Approximately, two years.</p> <p>10 Q Okay. What department were you in?</p> <p>11 A Door Warehouse.</p> <p>12 Q You were an hourly employee; is that</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q Okay. I think you told me -- what were</p> <p>16 you making at the time you left, \$12.50 an hour?</p> <p>17 Oh, no, I'm sorry. That's Weidmann. Maybe we</p> <p>18 didn't talk about that. What were you making at</p> <p>19 MBCI when you left?</p> <p>20 A \$12.60.</p> <p>21 Q And I assume since you were on first</p> <p>22 shift, there wasn't any type of shift</p> <p>23 differential or any other money on top of that</p>

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Page 33	Page 35
<p>1 hourly rate?</p> <p>2 A No.</p> <p>3 Q Tell me how you kept track of your work</p> <p>4 hours there.</p> <p>5 A What do you mean?</p> <p>6 Q Did you fill out a time card; was there a</p> <p>7 time clock; how were your hours kept track of?</p> <p>8 A Time clock.</p> <p>9 Q Okay. How did that system work?</p> <p>10 A You had a card that you clocked in with.</p> <p>11 Q And is the card like a big paper card or</p> <p>12 is it more something that looks like a credit</p> <p>13 card?</p> <p>14 A Like a credit card.</p> <p>15 Q Okay. And walk me through the steps.</p> <p>16 How did this thing work?</p> <p>17 A If I remember correctly, you just slide</p> <p>18 it.</p> <p>19 Q Slide it down the side of the machine?</p> <p>20 A Yes.</p> <p>21 Q Okay. And then what would the -- what</p> <p>22 would the machine do; what did it tell you;</p> <p>23 anything at that point?</p>	<p>1 A If I remember correctly, occasionally</p> <p>2 when you would swipe it, nothing would happen.</p> <p>3 Q All right.</p> <p>4 A I don't think it happened too often.</p> <p>5 Q I'm sorry. I didn't hear you.</p> <p>6 A I don't think it happened too often.</p> <p>7 Q Okay. So if you swiped and nothing</p> <p>8 happened, what would you do?</p> <p>9 A Just tell someone.</p> <p>10 Q Would you swipe it again?</p> <p>11 A Yes.</p> <p>12 Q Okay. And if that didn't work, then you</p> <p>13 would go tell somebody?</p> <p>14 A Uh-huh.</p> <p>15 BY THE REPORTER: Is that "yes?"</p> <p>16 A Yes.</p> <p>17 Q (continued by Ms. Creveling) You're doing</p> <p>18 pretty good with that rule. Most people forget</p> <p>19 that in about ten seconds. Who would you go</p> <p>20 tell if the clock wasn't working?</p> <p>21 A Well, at that time, either Linda or</p> <p>22 Gloria; just made sure that somebody knew.</p> <p>23 Q What position did Linda --</p>
Page 34	Page 36
<p>1 A I think your name popped up.</p> <p>2 Q Okay. There's some sort of screen on the</p> <p>3 front of it?</p> <p>4 A Yes.</p> <p>5 Q Okay. Did it beep at you or anything?</p> <p>6 A I think so.</p> <p>7 Q Okay. Do you recall, did the system have</p> <p>8 any particular name or did the machine have any</p> <p>9 particular name?</p> <p>10 A It did.</p> <p>11 Q Do you remember what it was?</p> <p>12 A I don't.</p> <p>13 Q Okay. I've heard of a couple of</p> <p>14 different systems. I'll just mention some, and</p> <p>15 if you think it's one of them, let me know.</p> <p>16 I've heard of, I think, Stripe Lightning or</p> <p>17 Strike Lightning and Kronos. Do either of those</p> <p>18 sound familiar?</p> <p>19 A Kronos sounds familiar.</p> <p>20 Q Okay. Ever have any problems clocking in</p> <p>21 or clocking out?</p> <p>22 A I think so.</p> <p>23 Q Tell me about those.</p>	<p>1 A And they see me there.</p> <p>2 Q So you would get paid, right?</p> <p>3 A Right.</p> <p>4 Q What position did Linda hold?</p> <p>5 A Linda holds support tech.</p> <p>6 Q Was she a Door Warehouse employee?</p> <p>7 A Yes.</p> <p>8 Q Okay. Did she have supervisory-type</p> <p>9 duties?</p> <p>10 A Yes.</p> <p>11 Q All right.</p> <p>12 A Light.</p> <p>13 Q Okay. And how about Gloria, what</p> <p>14 position did she hold?</p> <p>15 A A material handler.</p> <p>16 Q Also in Door Warehouse?</p> <p>17 A Yes.</p> <p>18 Q Okay. Why not the supervisor?</p> <p>19 A The supervisor at 5:00 is not there</p> <p>20 usually.</p> <p>21 Q Okay. And on those few occasions when</p> <p>22 the time clock didn't work and you had to go</p> <p>23 tell somebody, did you ever have any problems</p>

9 (Pages 33 to 36)

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Court Reporting * Legal Videography * Trial Services

Page 37	Page 39
<p>1 with getting paid?</p> <p>2 A Problem as to --</p> <p>3 Q Not getting paid.</p> <p>4 A You're talking about right then on time</p> <p>5 or later?</p> <p>6 Q Well, I guess I don't know how to answer</p> <p>7 that. You clock in. How often were you getting</p> <p>8 paid? Let's start there.</p> <p>9 A When you clock in?</p> <p>10 Q No. Were you getting paid every week or</p> <p>11 every two weeks?</p> <p>12 A Every week.</p> <p>13 Q Every week. Okay. So let's say on a</p> <p>14 Tuesday, you swiped and it didn't work and you</p> <p>15 went and told Linda or Gloria. At the end of</p> <p>16 that week, would you get properly paid for that</p> <p>17 Tuesday even though the clock hadn't worked?</p> <p>18 A It's hard to remember, but I do remember</p> <p>19 times that somebody had to get paid the next</p> <p>20 week, because something didn't work.</p> <p>21 Q Okay.</p> <p>22 A But as with me, I don't remember not</p> <p>23 getting paid.</p>	<p>1 Q Okay.</p> <p>2 A If you're just a minute or up to two</p> <p>3 hours, it's a half a point.</p> <p>4 Q Okay. What about if you're late more</p> <p>5 than two hours?</p> <p>6 A It's going to be one point.</p> <p>7 Q And what if you had to leave work early?</p> <p>8 A If it was two hours or less, a half</p> <p>9 point.</p> <p>10 Q And if it was more than two hours?</p> <p>11 A One point.</p> <p>12 Q Were there any absences that were excused</p> <p>13 under the policy?</p> <p>14 A Absences that were excused?</p> <p>15 Q Uh-huh. Where you wouldn't get points</p> <p>16 even though you weren't at work.</p> <p>17 A If you had consecutive days and you had</p> <p>18 vacation time.</p> <p>19 Q What would happen then?</p> <p>20 A Vacation time would be used and you</p> <p>21 wouldn't get a point.</p> <p>22 Q Any other reasons why absences or tardies</p> <p>23 or leave-earlies would be excused and you</p>
Page 38	Page 40
<p>1 Q Okay.</p> <p>2 A I don't remember.</p> <p>3 Q So would somebody then go into the system</p> <p>4 and tell the clock or tell the system Mr. Giles</p> <p>5 was here; is that how that worked?</p> <p>6 A Yes.</p> <p>7 Q Okay. And tell me about the company's</p> <p>8 Attendance Policy. It's my understanding that a</p> <p>9 new Attendance Policy went into effect in July</p> <p>10 of 2005. Does that sound familiar to you?</p> <p>11 A Yes.</p> <p>12 Q Okay. Tell me about your understanding</p> <p>13 of how the Attendance Policy worked.</p> <p>14 BY MR. ARNOLD: Object to the form.</p> <p>15 A You got -- if you called in before your</p> <p>16 schedule of work time and you had to be out, it</p> <p>17 would be two points.</p> <p>18 Q (continued by Ms. Creveling) That's if</p> <p>19 you're going to be absent for the whole day?</p> <p>20 A Yes.</p> <p>21 Q Okay. What about if you're going to be</p> <p>22 late?</p> <p>23 A It depends on how late.</p>	<p>1 wouldn't get points?</p> <p>2 A Scheduled time off.</p> <p>3 Q What's scheduled time off?</p> <p>4 A MasterBrand, I think they gave eight</p> <p>5 hours of scheduled time off.</p> <p>6 Q Is that eight hours per month or year or</p> <p>7 how did it work?</p> <p>8 A Initially when they started, they gave</p> <p>9 eight hours. And that was in July when they</p> <p>10 changed the system, changed the --</p> <p>11 Q So that would be for the rest of that</p> <p>12 year, then?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 A And I think that fourteen hours were</p> <p>16 given at the start of the next year for the</p> <p>17 whole year.</p> <p>18 Q Okay. And so if you were not going to be</p> <p>19 at work, you could use -- and you had it</p> <p>20 available -- you could use scheduled time off</p> <p>21 and you wouldn't get points?</p> <p>22 A Right.</p> <p>23 Q Okay. Any other excused-type absences</p>

10 (Pages 37 to 40)

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Court Reporting * Legal Videography * Trial Services

Page 41	Page 43
<p>1 under the Attendance Policy?</p> <p>2 A I don't think so.</p> <p>3 Q Okay. What if you brought in a doctor's</p> <p>4 note? Let's say you were sick for the day and</p> <p>5 you brought in a doctor's note to show that you</p> <p>6 had been sick for that day, would you still get</p> <p>7 points for that day?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A Unless it was -- you're talking about</p> <p>11 just for one day? For just one day, yes, you</p> <p>12 would get a point.</p> <p>13 Q Okay. What if it was more days than</p> <p>14 that?</p> <p>15 A For consecutive days, if you had</p> <p>16 scheduled time off or vacation time, you can</p> <p>17 use -- I mean, if you have scheduled time off or</p> <p>18 vacation time on consecutive days, they use the</p> <p>19 vacation days.</p> <p>20 Q And what if you didn't?</p> <p>21 A If you didn't, you got points.</p> <p>22 Q Okay. So let's say you were off for two</p> <p>23 days, would you get two points for the first day</p>	<p>1 Q (continued by Ms. Creveling) I'm going</p> <p>2 to hand you what we've marked as Defendant's</p> <p>3 Exhibit 1 and have you take a look at that for</p> <p>4 me, please, and let me know when you're done.</p> <p>5 BY MR. ARNOLD: Since you all didn't use</p> <p>6 Bates labels, Kelly, would you just verify -- or</p> <p>7 just put on the record what tab these might have</p> <p>8 been under, if you can recall, for purposes --</p> <p>9 because that's kind of how we've kept track of</p> <p>10 it.</p> <p>11 BY MS. CREVELING: I can't recall.</p> <p>12 BY MR. ARNOLD: Okay.</p> <p>13 BY MS. CREVELING: I think we've provided</p> <p>14 them with our initial disclosures, and because</p> <p>15 of that, we didn't attach them to the discovery.</p> <p>16 That's my recollection. I think we just said we</p> <p>17 had previously produced it.</p> <p>18 Q (continued by Ms. Creveling) Have you</p> <p>19 had a chance to get through Exhibit 1?</p> <p>20 A Yes.</p> <p>21 Q Okay. Let's look at the first page,</p> <p>22 please. Is that your signature on that</p> <p>23 document?</p>
Page 42	Page 44
<p>1 and two points for the second day?</p> <p>2 A Well --</p> <p>3 Q If you didn't have vacation or scheduled</p> <p>4 time.</p> <p>5 A Yes.</p> <p>6 Q Okay. In your opinion, was the</p> <p>7 Attendance Policy applied equally to everyone?</p> <p>8 BY MR. ARNOLD: Object to form.</p> <p>9 A I don't know.</p> <p>10 Q (continued by Ms. Creveling) I'm sorry?</p> <p>11 A I don't know if it was applied equally to</p> <p>12 everyone.</p> <p>13 Q Okay. Are you aware of any instances</p> <p>14 where people were allowed to be absent from work</p> <p>15 and not incur points?</p> <p>16 A I don't know.</p> <p>17 Q Okay.</p> <p>18</p> <p>19 REPORTER'S NOTE: (At this point, instrument was</p> <p>20 marked for identification by the Reporter as</p> <p>21 Defendant's Exhibit Number 1, after which, the</p> <p>22 deposition continued, as follows:)</p> <p>23</p>	<p>1 A Yes.</p> <p>2 Q Okay. And is the attached policy the</p> <p>3 Attendance Policy that went into effect in July</p> <p>4 of 2005 that we've discussed?</p> <p>5 A Yes.</p> <p>6 Q Okay. Let's look at the first page of</p> <p>7 the Attendance Policy under the heading</p> <p>8 "Reporting An Absence."</p> <p>9 A Okay.</p> <p>10 Q This section of the policy indicates that</p> <p>11 employees who are going to be absent from work</p> <p>12 must call in and leave a message at a particular</p> <p>13 number. Is that your recollection of the actual</p> <p>14 practice that was in place?</p> <p>15 A Yes.</p> <p>16 Q Okay. And on occasion, you had reason to</p> <p>17 call in; is that right?</p> <p>18 A Yes.</p> <p>19 Q Okay. And tell me about that process.</p> <p>20 You would call in, and was it a recording? How</p> <p>21 did that work?</p> <p>22 A It was a recording.</p> <p>23 Q And what happened with that recording; do</p>

11 (Pages 41 to 44)

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Court Reporting * Legal Videography * Trial Services

Page 45	Page 47
<p>1 you know?</p> <p>2 A What do you mean what happened with it?</p> <p>3 Q You called in; you left a message on the</p> <p>4 recording. Do you know who retrieved those</p> <p>5 messages?</p> <p>6 A No.</p> <p>7 Q Okay. Do you know who those messages</p> <p>8 were provided to?</p> <p>9 A They're supposed to be supplied to the</p> <p>10 supervisor.</p> <p>11 Q Okay. Let's take a look at the second</p> <p>12 page of the Attendance Policy. Under the</p> <p>13 heading of "Related Consecutive Absences," this</p> <p>14 indicates that if an employee misses consecutive</p> <p>15 work days due to their own medical condition,</p> <p>16 they will get, as I understand it, two points</p> <p>17 for the first day and one point for the second</p> <p>18 day. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Okay. Is that your understanding of what</p> <p>21 the practice was?</p> <p>22 A Except when you have vacation hours or</p> <p>23 scheduled time off.</p>	<p>1 for your attendance?</p> <p>2 A No.</p> <p>3 Q Okay. If your supervisor recalled</p> <p>4 issuing a verbal warning, would you have reason</p> <p>5 to disagree with that?</p> <p>6 A Yes.</p> <p>7 Q Why?</p> <p>8 A Because I did not get a verbal warning.</p> <p>9 Q Is it that you did not get one or you</p> <p>10 don't remember getting one?</p> <p>11 A I did not get one.</p> <p>12 Q Okay. Did you get a verbal warning for</p> <p>13 anything else?</p> <p>14 A No.</p> <p>15 Q Okay. Any idea how verbal warnings were</p> <p>16 issued by Mr. Oleinick?</p> <p>17 A Just what I heard from other people.</p> <p>18 Q Okay. No experience with that yourself?</p> <p>19 A No.</p> <p>20 Q Okay. Let's talk a little bit about</p> <p>21 events in December of 2005. It's my</p> <p>22 understanding that you requested a leave of</p> <p>23 absence in December of 2005; is that accurate?</p>
Page 46	Page 48
<p>1 Q Okay. I think this indicates that that</p> <p>2 happens so long as the employee has exhausted</p> <p>3 their scheduled time off and their vacation.</p> <p>4 A Okay.</p> <p>5 Q Do you agree with that? So if someone</p> <p>6 has exhausted their vacation time and their</p> <p>7 scheduled time and they're out consecutive days</p> <p>8 for their medical condition, they'll get two</p> <p>9 points for the first day and one point for the</p> <p>10 second day?</p> <p>11 A Yes.</p> <p>12 Q Okay. And was that the practice of the</p> <p>13 company when you were there?</p> <p>14 A Yes.</p> <p>15 Q Okay. Let's talk a little bit about what</p> <p>16 would happen if an employee violated the</p> <p>17 Attendance Policy. On page 3 of the Attendance</p> <p>18 Policy there's a heading called "Disciplinary</p> <p>19 Action." It talks about warnings that would</p> <p>20 occur. Did you receive any warnings under the</p> <p>21 Attendance Policy?</p> <p>22 A No.</p> <p>23 Q Do you recall receiving a verbal warning</p>	<p>1 A No.</p> <p>2 Q No?</p> <p>3 A No, I did not request it.</p> <p>4 BY MR. ARNOLD: Before we get into this,</p> <p>5 can I ask the relevance, since it's admitted by</p> <p>6 the Defendant that at least for the absence of</p> <p>7 December 19th through January 2nd, '06, uh, just</p> <p>8 why we need to get into it since it's --</p> <p>9 BY MS. CREVELING: I'm not going to get</p> <p>10 into a whole lot of detail on it.</p> <p>11 BY MR. ARNOLD: Okay.</p> <p>12 BY MS. CREVELING: I'm going to talk a</p> <p>13 little bit more about process.</p> <p>14 BY MR. ARNOLD: Okay; that's fine.</p> <p>15 Q (continued by Ms. Creveling) You were</p> <p>16 granted a leave of absence in December of '05;</p> <p>17 is that right?</p> <p>18 A Yes.</p> <p>19 Q Okay. Tell me what type of process you</p> <p>20 went through in order to obtain a leave. What</p> <p>21 was the company's procedure to get a leave of</p> <p>22 absence?</p> <p>23 A I just know what happened with me.</p>

12 (Pages 45 to 48)

MERRILL LEGAL SOLUTIONS

Court Reporting * Legal Videography * Trial Services

Page 49	Page 51
<p>1 Q Okay. Tell me about that.</p> <p>2 A I went to the doctor and he said I needed</p> <p>3 to be on light duty, and I gave it to my</p> <p>4 supervisor. Then I got called to the office,</p> <p>5 and they put these papers down in front of me</p> <p>6 and told me to fill them out, and I filled them</p> <p>7 out and was sent home.</p> <p>8 Q Did you have any problem with that</p> <p>9 process?</p> <p>10 A No.</p> <p>11 Q In December of '05, did you get all of</p> <p>12 the leave that you needed?</p> <p>13 A Do you mean all that the doctor --</p> <p>14 Q Said that you needed?</p> <p>15 A Well, he didn't say, "Leave;" he said,</p> <p>16 "Light duty."</p> <p>17 Q Okay. Well, we've established that you</p> <p>18 got a leave of absence in December of '05. Are</p> <p>19 you telling me you didn't need it?</p> <p>20 BY MR. ARNOLD: Object to form.</p> <p>21 A The doctor said to be on light duty.</p> <p>22 Q (continued by Ms. Creveling) Okay.</p> <p>23 A But MasterBrand sends you home.</p>	<p>1 Q And MasterBrand sent you home and put you</p> <p>2 on a leave of absence?</p> <p>3 A Yes.</p> <p>4 Q Okay. And for the time that you were on</p> <p>5 that leave of absence, did you get any points</p> <p>6 under the Attendance Policy?</p> <p>7 A No.</p> <p>8 Q Okay. The company's records indicate</p> <p>9 that you came back to work on January 3 of 2006.</p> <p>10 Would you have any reason to dispute that?</p> <p>11 A Was that a Monday? I'm not sure.</p> <p>12 Q I don't know. Let me look.</p> <p>13 A Or was that a Tuesday?</p> <p>14 Q It was a Tuesday.</p> <p>15 A What was the question?</p> <p>16 Q If the company's records show that you</p> <p>17 returned to work from that leave of absence on</p> <p>18 January 3, 2006, would you have any reason to</p> <p>19 dispute that?</p> <p>20 A No.</p> <p>21 Q Okay. Anything happen when you came back</p> <p>22 to work; did that go okay?</p> <p>23 BY MR. ARNOLD: Object to the form.</p>
Page 50	Page 52
<p>1 Q Okay. They couldn't accommodate the</p> <p>2 light duty?</p> <p>3 BY MR. ARNOLD: Object to form.</p> <p>4 A I just know they sent me home. They</p> <p>5 don't say what they -- what did you just say?</p> <p>6 Q (continued by Ms. Creveling) They</p> <p>7 wouldn't accommodate the light duty?</p> <p>8 A They don't say they accommodate it or</p> <p>9 not. They just send you home.</p> <p>10 Q Okay. So you don't know why the doctor</p> <p>11 said light duty? You don't know why you were</p> <p>12 given a leave of absence, but you were given a</p> <p>13 leave of absence; is that what I'm to</p> <p>14 understand?</p> <p>15 A Well, the job requires that you be able</p> <p>16 to lift fifty to seventy-five pounds.</p> <p>17 Q Okay. And what were your restrictions at</p> <p>18 that time?</p> <p>19 A I think it was about ten or fifteen</p> <p>20 pounds.</p> <p>21 Q Okay. So your restrictions were</p> <p>22 inconsistent with the job duties that you had?</p> <p>23 A Yes.</p>	<p>1 A Yes.</p> <p>2 Q (continued by Ms. Creveling) What</p> <p>3 happened when you came back to work?</p> <p>4 A Repeat that question.</p> <p>5 Q Did anything unusual happen when you came</p> <p>6 back to work?</p> <p>7 A Oh. No. I'm sorry.</p> <p>8 Q Then as I understand it on January 4th,</p> <p>9 you worked a little better than two hours and</p> <p>10 then went home.</p> <p>11 A Yes.</p> <p>12 Q Is that accurate?</p> <p>13 A Yes.</p> <p>14 Q Okay. Let's go ahead and mark this.</p> <p>15</p> <p>16 REPORTER'S NOTE: (At this point, instrument was</p> <p>17 marked for identification by the Reporter as</p> <p>18 Defendant's Exhibit Number 2, after which, the</p> <p>19 deposition continued, as follows:)</p> <p>20</p> <p>21 Q (continued by Ms. Creveling) I'll hand</p> <p>22 you what we've marked as Defendant's Exhibit 2,</p> <p>23 which is a punch detail history of your time</p>

13 (Pages 49 to 52)

Page 53

1 from January 1, '05 through June 1 of '06. And
 2 if you'll look on the last page of that exhibit,
 3 it shows for January 4, 2006 that you clocked in
 4 at 4:56 a.m. and clocked out at 7:10 a.m. Do
 5 you see that? It's under the "actual" column.
 6 There's the date on the far left, and then about
 7 three columns over maybe there's "actual."
 8 BY MR. ARNOLD: May I?
 9 BY MS. CREVELING: Sure.
 10 A 4:56.
 11 Q (continued by Ms. Creveling) And out at
 12 7:10; do you see that?
 13 A Yes.
 14 Q Okay. Any reason to disagree with the
 15 time there as recorded by the time clock?
 16 A No.
 17 Q Okay. For what reason did you leave work
 18 early on January 4th?
 19 A I was sick.
 20 Q Let's go back to December of '05 for just
 21 a moment. The company's records show that you
 22 were out due to some sort of shoulder injury; is
 23 that right?

Page 54

1 A You're going back to what?
 2 Q In December of 2005, you were out for
 3 some sort of shoulder problem; is that right?
 4 A Yes.
 5 Q Okay. And then your absence -- or
 6 your -- your leave early on January 4, you said
 7 you were sick. So that's not related to your
 8 shoulder; is that correct?
 9 A Right.
 10 Q Okay. Did you talk to anyone at
 11 MasterBrand before you left early on January 4?
 12 A Yes.
 13 Q Tell me who you spoke with.
 14 A John Oleinick.
 15 Q As best you can, repeat for me that
 16 conversation.
 17 A I told John I was sick, and he came back
 18 and said, "Are you leaving or staying?" And I
 19 said, "I'm leaving." And he said, "And we're in
 20 the same fix as we were before."
 21 Q And when he said, "We're in the same fix
 22 as before," what did you understand that to
 23 mean?

Page 55

1 A When I was out on leave.
 2 Q In December of '05?
 3 A Yes. They had to try to find somebody to
 4 do the job that I did again, like they did when
 5 I was on leave.
 6 Q And was that a problem to find somebody
 7 to do your job while you were out on leave?
 8 BY MR. ARNOLD: Object to form.
 9 A Yes.
 10 Q (continued by Ms. Creveling) Tell me
 11 about that.
 12 A Tell you about --
 13 Q What was the problem?
 14 A Well, I can tell you that when that other
 15 person that did my job was out, I know there was
 16 always a problem trying to get somebody to fill
 17 in for him.
 18 Q How many material handlers were there in
 19 the Door Warehouse on first shift?
 20 A I'm not sure.
 21 Q Roughly?
 22 A Just in the doors? I would say twelve or
 23 thirteen, I think.

Page 56

1 Q And that's just on first shift; is that
 2 right?
 3 A Yes.
 4 Q Were you all doing basically the same
 5 thing?
 6 A Basically. But you pull orders, you have
 7 doors, you have trim. I worked in the trim
 8 area.
 9 Q I guess give me a quick explanation of
 10 what a material handler does.
 11 A They get an order of what material is
 12 needed to be pulled. They pull the order, put
 13 it on a cart, send it to the next department.
 14 Q Was this material that the assemblers
 15 needed in order to make the cabinets?
 16 A Yes.
 17 Q Okay. As I understand it, there are two
 18 areas in Door Warehouse, the trim area and the
 19 door area?
 20 A Yes.
 21 Q Roughly, how many material handlers on
 22 first shift worked with you in the trim area?
 23 A Usually one other person, besides me.

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Court Reporting * Legal Videography * Trial Services

Page 57	Page 59
<p>1 Q Who was that?</p> <p>2 A That was Terry.</p> <p>3 Q Do you remember his last name?</p> <p>4 A No.</p> <p>5 Q So all of the remaining twelve to</p> <p>6 thirteen material handlers worked over in Doors?</p> <p>7 A Yes.</p> <p>8 Q When you were on your leave of absence in</p> <p>9 December of '05, to your knowledge, was Terry at</p> <p>10 work during that period?</p> <p>11 A To my knowledge, he was.</p> <p>12 Q Okay. Do you know who filled in for you</p> <p>13 while you were on your leave in December of '05?</p> <p>14 BY MR. ARNOLD: Objection, relevance.</p> <p>15 A Just -- the only way I can know that,</p> <p>16 since I wasn't there, I just heard it from</p> <p>17 somebody.</p> <p>18 Q (continued by Ms. Creveling) Right. I</p> <p>19 understand that. What did you hear?</p> <p>20 A I heard that Tracy did some and John</p> <p>21 Oleinick did some.</p> <p>22 Q Do you know Tracy's last name?</p> <p>23 A Moncus.</p>	<p>1 Q Did you ever talk to John Oleinick about</p> <p>2 what happened while you were out in December of</p> <p>3 '05?</p> <p>4 A No.</p> <p>5 Q Okay. Did John ever make any comments to</p> <p>6 you about -- or any other comments, other than,</p> <p>7 "We're in the same fix as before," that you've</p> <p>8 already told me about, any other comments about</p> <p>9 you being off work in December of '05?</p> <p>10 A Not that I remember.</p> <p>11 Q Okay. Do you recall a time when you are</p> <p>12 at work, but Terry had to be off work?</p> <p>13 A Yes.</p> <p>14 Q Okay. And what do you recall about who</p> <p>15 filled in for Terry when Terry was gone?</p> <p>16 A Some days, nobody.</p> <p>17 Q And some days somebody would fill in?</p> <p>18 A Yes.</p> <p>19 Q Do you recall who filled in?</p> <p>20 A John Oleinick. At times, Rhonda. I</p> <p>21 think that's about it.</p> <p>22 Q Do you remember Rhonda's last name?</p> <p>23 A McKemie.</p>
Page 58	Page 60
<p>1 Q Do you know how to spell that?</p> <p>2 A M-O-N-C-U-S.</p> <p>3 Q And the supervisor did some of the work,</p> <p>4 too, from what you heard?</p> <p>5 A From what I heard.</p> <p>6 Q Okay. Anybody else that you heard was</p> <p>7 filling in for you during December of '05?</p> <p>8 A Not that I know of.</p> <p>9 Q Okay. Did you ever talk to Tracy about</p> <p>10 what happened while you were out on your leave</p> <p>11 in December of '05?</p> <p>12 A Yeah; yes.</p> <p>13 Q Okay. Tell me what Tracy said.</p> <p>14 A I really can't remember exactly what he</p> <p>15 said.</p> <p>16 Q What's the gist of the conversation?</p> <p>17 A Just that they were working on -- I guess</p> <p>18 the length of time, about ten hours each.</p> <p>19 Q So according to Tracy, the department was</p> <p>20 scheduled for overtime while you were out?</p> <p>21 A Yes.</p> <p>22 Q Okay. Anything else?</p> <p>23 A No.</p>	<p>1 Q McKemie?</p> <p>2 A Uh-huh.</p> <p>3 BY THE REPORTER: How do you spell that?</p> <p>4 THE WITNESS: M-C-K-E-M-I-E, I think.</p> <p>5 Q (continued by Ms. Creveling) On the days</p> <p>6 when nobody filled in, did Terry's work just not</p> <p>7 get done?</p> <p>8 A I had to do it.</p> <p>9 Q All right.</p> <p>10 A As much as I could.</p> <p>11 Q And do you know whether Terry did the</p> <p>12 same for you when you were out?</p> <p>13 A I do know he didn't.</p> <p>14 Q Do you know why?</p> <p>15 A He had help. He had someone every day to</p> <p>16 help him.</p> <p>17 Q Okay. So when you were out in December</p> <p>18 of '05, Terry didn't have to pick up any of your</p> <p>19 duties, because there was somebody else filling</p> <p>20 in for you?</p> <p>21 A Yes.</p> <p>22 Q Okay. Do you have any concerns or do you</p> <p>23 think that's unusual that you recall a time when</p>

15 (Pages 57 to 60)

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Court Reporting * Legal Videography * Trial Services

Page 61

1 Terry was off and there was nobody to fill in,
 2 but when you were off, there was somebody to
 3 fill in?
 4 A What's the question?
 5 Q I understand there's a difference. You
 6 recall a time when Terry was off and you had to
 7 pick up his duties sometimes. When you were off
 8 in December of '05, in contrast, there were
 9 people to fill in for you. Is that okay with
 10 you? Do you attribute any problems to that?
 11 BY MR. ARNOLD: Object to form.
 12 A Do I attribute any problems to it?
 13 Q (continued by Ms. Creveling) Are you
 14 suspicious of that, I guess is my question?
 15 BY MR. ARNOLD: Object to form.
 16 A I don't understand it; I didn't
 17 understand it.
 18 Q (continued by Ms. Creveling) Okay.
 19 Terry's off work, and you tell me there are days
 20 when you have to fill in for him.
 21 A Uh-huh; yes.
 22 Q Does it upset you at all that on days
 23 when Terry was off you had to fill in for him?

Page 62

1 BY MR. ARNOLD: Object to form.
 2 A Doing basically all the work, yes.
 3 Q (continued by Ms. Creveling) Okay. And
 4 it's your understanding that while you were off,
 5 Terry didn't have to fill in for you, because
 6 somebody was assigned to cover for you, right?
 7 A Yes.
 8 Q Okay. Do you think the company did that
 9 to you on purpose?
 10 A I don't know if the company knew about
 11 it. I know John Oleinick knew about it.
 12 Q Okay. Do you think John did that on
 13 purpose?
 14 A Yes.
 15 Q Why? Why do you think that?
 16 A I don't know.
 17 Q Well, tell me what you think John was
 18 motivated by.
 19 A I don't know what motivated him.
 20 Q I'm not asking you what, in fact,
 21 motivated him, but what do you suspect motivated
 22 him?
 23 A I really don't know.

Page 63

1 Q Okay. Are you asserting in this lawsuit
 2 that John was angry with you for taking leave
 3 and therefore he would make you -- he would fail
 4 to assign people to cover absences of other
 5 employees so that you would have more work?
 6 BY MR. ARNOLD: Object to form.
 7 A Actually from December to January, that
 8 didn't happen. It happened before.
 9 Q (continued by Ms. Creveling) Okay.
 10 A And on one occasion, his support tech --
 11 I told the support tech.
 12 Q Told the support tech what?
 13 A That John said he was going to leave me
 14 over there to do all the work when Terry was out
 15 on this particular time.
 16 Q Uh-huh.
 17 A And I told her and she got me some help
 18 the first time.
 19 Q Okay. Other than your leave in December
 20 of '05, had you had any other leaves of absence?
 21 A No, not that I remember.
 22 Q Okay. So if there was a time, prior to
 23 December of '05, where Terry was absent and you

Page 64

1 were forced to cover for him or do his job
 2 duties in addition to your own, clearly that
 3 would have nothing to do with your leave in
 4 December of '05?
 5 A It's hard to say, because you're doing
 6 more work and working longer hours. It wears
 7 down your body.
 8 Q Oh, I understand that. But in terms of
 9 the reasons why John may or may not have been
 10 assigning people to help you when another
 11 employee was out didn't have anything to do with
 12 your leave in December of '05?
 13 A I don't understand what you mean.
 14 Q Okay. Let's go back -- I sense from you
 15 that you're suspicious of John Oleinick
 16 because -- or that you're unhappy with John
 17 Oleinick, because when Terry was out, you had no
 18 help, but when you were out, Terry got help.
 19 BY MR. ARNOLD: Objection.
 20 Q (continued by Ms. Creveling) Is that a
 21 fair understanding on my part of how you feel
 22 about the situation?
 23 BY MR. ARNOLD: Object to the form.

Page 65	Page 67
<p>1 A That I was upset?</p> <p>2 Q (continued by Ms. Creveling) Yes.</p> <p>3 A I was upset.</p> <p>4 Q Okay. Explain for me why that situation</p> <p>5 upset you.</p> <p>6 A Because there was a lot of work to do.</p> <p>7 Q Okay. I understand that when one</p> <p>8 employee is out and the other employee has to</p> <p>9 cover for them, that's a strain on the employee</p> <p>10 who's at work, because they just obviously have</p> <p>11 a lot more work to do. What I now need to</p> <p>12 understand is whether you think John was doing</p> <p>13 that to you on purpose; leaving you to cover for</p> <p>14 an absent employee?</p> <p>15 A Whether I think it was on purpose?</p> <p>16 Q Yes.</p> <p>17 A Yes.</p> <p>18 Q Okay.</p> <p>19 BY MR. ARNOLD: I would like to know the</p> <p>20 relevance of this line of questioning.</p> <p>21 BY MS. CREVELING: We've got a</p> <p>22 retaliation claim on our hands here.</p> <p>23 BY MR. ARNOLD: Correct.</p>	<p>1 an affirmative defense you're trying to prove.</p> <p>2 BY MS. CREVELING: I'm not trying to</p> <p>3 prove an affirmative defense right now. I'm</p> <p>4 trying to get his understanding of his</p> <p>5 relationship with his supervisor and what he</p> <p>6 thinks motivated his supervisor; whether it was</p> <p>7 something impermissible and illegal or not. I</p> <p>8 think that's relevant entirely to a retaliation</p> <p>9 claim that points directly at the supervisor's</p> <p>10 conduct.</p> <p>11 Q (continued by Ms. Creveling) How would</p> <p>12 you describe your relationship with Mr.</p> <p>13 Oleinick?</p> <p>14 A I don't know what you mean. Are we close</p> <p>15 friends?</p> <p>16 Q You tell me.</p> <p>17 A No.</p> <p>18 Q Okay. Did you respect one another?</p> <p>19 A Yes.</p> <p>20 Q Okay. It's my understanding in this</p> <p>21 lawsuit that you allege that you were retaliated</p> <p>22 against; that things happened to you at work</p> <p>23 because you took a leave of absence. Do I</p>
Page 66	Page 68
<p>1 BY MS. CREVELING: And he is alleging</p> <p>2 that John Oleinick, in essence, is the prime</p> <p>3 character in that retaliation claim. So I'm</p> <p>4 trying to understand why it is that he believes</p> <p>5 John retaliated against him; what motivated John</p> <p>6 to retaliate against him and on what occasions</p> <p>7 he believed John retaliated again him. So I</p> <p>8 understand so far that he's upset with having to</p> <p>9 cover other employees' duties, for example, and</p> <p>10 that he thinks John did that to him on purpose.</p> <p>11 I'm now trying to understand what he thinks</p> <p>12 motivated John in doing that.</p> <p>13 BY MR. ARNOLD: Well --</p> <p>14 BY MS. CREVELING: And whether or not</p> <p>15 that's related to his leave. And so far, we</p> <p>16 haven't been able to understand that.</p> <p>17 BY MR. ARNOLD: Okay. I guess I'm not</p> <p>18 understanding how you're even coming close to</p> <p>19 making that relevant. What's relevant is the</p> <p>20 leave, and you're -- I guess what -- are you</p> <p>21 saying he was terminated for an at-will -- I</p> <p>22 guess what I'm trying to figure out, I don't</p> <p>23 even understand where you're going here even for</p>	<p>1 understand that correctly?</p> <p>2 A Yes.</p> <p>3 Q Okay. Why -- well, let me ask you this.</p> <p>4 Let's back up. Who specifically at MasterBrand</p> <p>5 do you believe retaliated against you?</p> <p>6 A John Oleinick.</p> <p>7 Q Anyone else?</p> <p>8 A That's who I was working directly with.</p> <p>9 Q Okay. Do you believe anybody else</p> <p>10 retaliated against you for taking leave in</p> <p>11 December of '05?</p> <p>12 A I don't know.</p> <p>13 Q Describe for me all of the ways in which</p> <p>14 you believe John Oleinick retaliated against you</p> <p>15 for having taken leave in December of '05.</p> <p>16 A When I got sick, he made the statement</p> <p>17 that I said earlier, "We're in the same fix as</p> <p>18 we were before," and I was not allowed to use my</p> <p>19 vacation time when I was out sick, and I had</p> <p>20 consecutive days as according to the Attendance</p> <p>21 Policy.</p> <p>22 Q The statement you're referring to is the</p> <p>23 one where he says, "We're in the same fix as</p>

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Court Reporting * Legal Videography * Trial Services

Page 69	Page 71
<p>1 before?"</p> <p>2 A Yes.</p> <p>3 Q Okay. How much vacation time do you</p> <p>4 believe you had available to you on January 4?</p> <p>5 A I had eighty hours.</p> <p>6 Q And what amount of scheduled time off, if</p> <p>7 any, did you have available to you on January 4,</p> <p>8 2006?</p> <p>9 A I'm not sure.</p> <p>10 Q How did the vacation time work? When did</p> <p>11 you get vacation time; when was it allotted to</p> <p>12 you, so-to-speak?</p> <p>13 A At the beginning of the year.</p> <p>14 Q So on January 1, 2006, how many vacation</p> <p>15 hours were you given?</p> <p>16 A Eighty.</p> <p>17 Q You didn't take any vacation time at</p> <p>18 all -- well, I guess by January 4, you wouldn't</p> <p>19 have taken any vacation time at that point.</p> <p>20 A No.</p> <p>21 Q Okay. What was the policy on providing</p> <p>22 notice of use of vacation? Did you have to</p> <p>23 give, for example, like at least twenty-four</p>	<p>1 Q So for a certain portion of the year use</p> <p>2 of vacation is allowed on a seniority basis; and</p> <p>3 after that, it's just first-come, first-serve?</p> <p>4 A Yes.</p> <p>5 Q Okay. Now, let's talk about how those</p> <p>6 notice provisions for use of vacation fit in</p> <p>7 with the Attendance Policy. On January 4 when</p> <p>8 you leave sick, obviously you wouldn't have been</p> <p>9 able to give a day's notice that you wanted to</p> <p>10 use vacation time to cover January 4, the rest</p> <p>11 of that day. How did that work; how was that</p> <p>12 supposed to work?</p> <p>13 A You're talking about January 4?</p> <p>14 Q Yes. Do you believe you should have been</p> <p>15 able to use a vacation day for the time you</p> <p>16 missed on January 4?</p> <p>17 A No.</p> <p>18 Q Okay. So how many points do you believe</p> <p>19 you should have received for January 4?</p> <p>20 A One.</p> <p>21 Q Do you know how many points you got for</p> <p>22 January 4?</p> <p>23 A As far as I know, one.</p>
Page 70	Page 72
<p>1 hours notice or anything of that nature?</p> <p>2 A For vacation; when you go on vacation?</p> <p>3 Q Right. Or if you want to use any</p> <p>4 vacation time, do you have to give advance</p> <p>5 notice in order to do that?</p> <p>6 A If you're going to take a vacation day,</p> <p>7 yeah.</p> <p>8 Q Okay. How much advance notice would you</p> <p>9 have to give?</p> <p>10 A The day before.</p> <p>11 Q Okay. And does it have to be approved by</p> <p>12 anyone?</p> <p>13 A Yes.</p> <p>14 Q Who?</p> <p>15 A Your supervisor.</p> <p>16 Q And do you know what criteria supervisors</p> <p>17 were supposed to use in deciding whether or not</p> <p>18 to approve a vacation day?</p> <p>19 A Up until a certain month -- and I don't</p> <p>20 remember the month --</p> <p>21 Q Uh-huh.</p> <p>22 A -- it's -- it's seniority, and then after</p> <p>23 that, it's first-come, first-serve.</p>	<p>1 Q All right.</p> <p>2 A You mean what MasterBrand gave me?</p> <p>3 Q Yes.</p> <p>4 A One.</p> <p>5 Q So we have no dispute with how that day</p> <p>6 was handled; is that right?</p> <p>7 A Right.</p> <p>8 Q Okay. And then let's look back at</p> <p>9 Exhibit 2. You were absent for the entire day</p> <p>10 on January 5; is that right?</p> <p>11 A Yes.</p> <p>12 Q Do you believe you should have been</p> <p>13 allowed to use vacation time for your absence on</p> <p>14 January 5?</p> <p>15 A Yes.</p> <p>16 Q Why?</p> <p>17 A It was a consecutive day of missed work</p> <p>18 time.</p> <p>19 Q Did you make a request to use vacation</p> <p>20 time for that day?</p> <p>21 A No.</p> <p>22 Q Then how would anybody know that you</p> <p>23 wanted to use that as vacation?</p>

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Page 73	Page 75
<p>1 A The company policy says that we can use 2 vacation time. 3 Q Okay. 4 A Well, not that we can use it. It says 5 that it will be used. 6 Q Okay. Tell me what part of the 7 Attendance Policy you're referring to. 8 A "Related Consecutive Absences." 9 Q Uh-huh. 10 A And the example. 11 Q Okay. Can you point to me more 12 specifically where it says that the vacation 13 time's going to -- use of vacation time's going 14 to be automatic? 15 A "An employee shall only be entitled to 16 this reduced point schedule provided the 17 employee timely reports each day's absence on 18 the Absence Line and the employee has exhausted 19 all Scheduled Time Off and vacation," which I 20 had not. 21 Q Right. So you had not. And you told me 22 that your situation is the opposite, right? You 23 called off work for that day and you had</p>	<p>1 time, right? 2 A Yes. 3 Q Okay. 4 A But -- 5 Q Were there exceptions, to your 6 understanding, to that policy or procedure, that 7 notice provision? 8 A Actually, there were. 9 Q Okay. Tell me about those exceptions. 10 A I don't know the particular time, but 11 there have been times where you call in and got 12 a vacation day the same day. 13 Q Okay. Did you do that? 14 A No. I was sick. 15 Q Okay. Do you know -- can you give me 16 names of people who were allowed to call in and 17 take a vacation day on the same day? 18 A I can't. 19 Q I'm sorry. You cannot? 20 A No. 21 Q Okay. Why do you believe that was 22 occurring, if you're unable to name the person 23 who was allowed to do that?</p>
Page 74	Page 76
<p>1 vacation time available, correct? 2 A Yes. 3 Q And it's my understanding that you told 4 that you believe that your vacation time would 5 have just been automatically. I'm asking you to 6 point to me in the policy where it indicates 7 that for people who had vacation time available, 8 you didn't have to give notice; it would just 9 been taken automatically. 10 A In the policy, I didn't read where it 11 said you had to give notice when you were out 12 sick. 13 Q So the vacation policy says you must give 14 notice if you want to take a vacation day; is 15 that right? 16 A Actually, is there a vacation policy in 17 here, because -- 18 Q No. The vacation policy would be a 19 separate policy. 20 A Okay. 21 Q But you've told me, as I understand it, 22 that the procedure was, you had to give notice 23 the day before if you wanted to use vacation</p>	<p>1 A I'm trying to remember it all. I'm 2 not -- repeat that question. 3 Q Sure. Why is it that you believe that 4 others were allowed to call in and obtain a 5 vacation on the same day if you don't know who 6 was allowed to do that? What makes you think 7 that was going on if you don't actually know 8 anybody who that happened to? 9 A I just can't remember the person who knew 10 it was going on at sometime. 11 Q Okay. Are there any other exceptions to 12 that notice provision of the Vacation Policy 13 that you believe were allowed? 14 A What do you mean? 15 Q You have to give notice the day before 16 that you're going to use a vacation day, and 17 you've told me you think there were exceptions 18 to that policy. 19 A Besides consecutive days. 20 Q All right. 21 A Consecutive absences. 22 Q Okay. So you think consecutive absences 23 were an exception to the notice provision in the</p>

19 (Pages 73 to 76)

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<p style="text-align: right;">Page 77</p> <p>1 Vacation Policy?</p> <p>2 A Yes.</p> <p>3 Q Okay. And tell me how you believe that</p> <p>4 exception worked.</p> <p>5 A I believe it worked like it said here,</p> <p>6 that when vacation time -- when you had vacation</p> <p>7 time, that it wouldn't be counted against you on</p> <p>8 consecutive absences until all of your vacation</p> <p>9 time was exhausted.</p> <p>10 Q And so a person who was absent for</p> <p>11 consecutive days and who had vacation time</p> <p>12 available didn't need to tell anybody they</p> <p>13 wanted to use vacation; it would just</p> <p>14 automatically be taken; is that your</p> <p>15 understanding of how that exception worked?</p> <p>16 A Yes.</p> <p>17 Q Okay. Can you identify any employees who</p> <p>18 were absent when they had vacation time and the</p> <p>19 company automatically used their vacation time</p> <p>20 to cover their absences?</p> <p>21 A I don't know.</p> <p>22 Q Why do you believe that that exception</p> <p>23 existed?</p>	<p style="text-align: right;">Page 79</p> <p>1 A Well, I guess you figure that your</p> <p>2 supervisor or personnel manager would discuss it</p> <p>3 with you.</p> <p>4 Q And you wouldn't have to tell them that</p> <p>5 you wanted to use vacation?</p> <p>6 A Of course, you would want to use it if</p> <p>7 you didn't want to get fired.</p> <p>8 Q So it's your belief that John Oleinick</p> <p>9 had a duty to ask you if you wanted to use</p> <p>10 vacation time to cover your absence on January</p> <p>11 5?</p> <p>12 BY MR. ARNOLD: Object to form.</p> <p>13 A He wouldn't have to ask me, but he -- I</p> <p>14 was fired before I got back. Since my</p> <p>15 attendance was in good standing obviously,</p> <p>16 because there was no verbal or written warnings.</p> <p>17 Q (continued by Ms. Creveling) Any other</p> <p>18 exceptions that you believe existed to that</p> <p>19 notice provision of the Vacation Policy?</p> <p>20 A Besides vacation and scheduled time off?</p> <p>21 Q Besides calling in the same day to take</p> <p>22 vacation and consecutive absences?</p> <p>23 A No.</p>
<p style="text-align: right;">Page 78</p> <p>1 A Why do I believe they put it in there?</p> <p>2 Q I guess I'm trying to understand what</p> <p>3 leads you to believe that use of vacation time</p> <p>4 was automatic for consecutive absences.</p> <p>5 A Well, the only thing it says, if you have</p> <p>6 a timely report of absence --</p> <p>7 Q Right.</p> <p>8 A -- that you have -- you call the Absence</p> <p>9 Line in time and the employee has exhausted all</p> <p>10 scheduled time off, which I have, it will be</p> <p>11 used.</p> <p>12 Q Right. I mean, this portion that you're</p> <p>13 referring to in the Attendance Policy says that</p> <p>14 if you don't have vacation time available to you</p> <p>15 and you're absent on consecutive days, the first</p> <p>16 day's two points; the second day will only be</p> <p>17 one point.</p> <p>18 A Unless you have vacation time, and then</p> <p>19 vacation hours will be used.</p> <p>20 Q Okay. And so from this paragraph, the</p> <p>21 related consecutive absences, you understand</p> <p>22 that use of vacation, if you have it, is just</p> <p>23 automatic?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Okay. Are you aware of any other</p> <p>2 employees supervised by Mr. Oleinick who had</p> <p>3 consecutive absences and Mr. Oleinick</p> <p>4 automatically took their vacation time?</p> <p>5 A I didn't know of anybody that -- I didn't</p> <p>6 know of anybody's information about what they</p> <p>7 did when there were consecutive days.</p> <p>8 Q Okay. How about any other supervisors?</p> <p>9 Are you aware of the practices of any other</p> <p>10 supervisors, besides Mr. Oleinick, and whether</p> <p>11 or not they would automatically take an</p> <p>12 employee's vacation?</p> <p>13 A I didn't know. I don't know what they</p> <p>14 do.</p> <p>15 Q Okay.</p> <p>16 BY MS. CREVELING: Let's take a break at</p> <p>17 this point.</p> <p>18</p> <p>19 REPORTER'S NOTE: (At this point, a brief recess</p> <p>20 was taken, after which, the deposition</p> <p>21 continued, as follows:)</p> <p>22</p> <p>23 Q (continued by Ms. Creveling) I think</p>

20 (Pages 77 to 80)

Page 81	Page 83
<p>1 right before we went on our break, we had gone 2 through all of the exceptions that you believe 3 existed to that notice provision in the Vacation 4 Policy. 5 BY MR. ARNOLD: Actually, let's go on the 6 record right now. I've looked through what I 7 believe you provided. If you all are going to 8 rely on the Vacation Policy as a defense, I 9 think that should be provided. It's not in our 10 initial disclosures. 11 BY MS. CREVELING: And that's fine. 12 We'll be happy to do that. Until today, we 13 weren't really aware that the Vacation Policy 14 might potentially come into play here. So we'll 15 certainly do that. 16 Q (continued by Ms. Creveling) And so as I 17 understand it, you believe there are the two 18 exceptions to the notice provision; that some 19 folks could call in on the same day and use 20 vacation for that same day, and then the 21 consecutive absences were the two exceptions? 22 A Yes. 23 Q And those were the only two exceptions,</p>	<p>1 were in the points, could you check? 2 A We could ask our supervisor or the 3 personnel manager. 4 Q Who was the personnel manager while you 5 were there? 6 A Perry. 7 Q Perry Ezell? 8 A Yes. 9 Q Did you ever do that, check on your 10 points? 11 A Yes. 12 Q And just so that we're clear for the 13 record, I'm only referring to the time period 14 after the most recent Attendance Policy went 15 into effect in July of 2005. So after July of 16 2005, at anytime did you check on your points 17 total? 18 A Yes. 19 Q Okay. How many times did you do that; do 20 you recall? 21 A I'm not sure. 22 Q Who did you check with? 23 A There was one other person, the support</p>
Page 82	Page 84
<p>1 as far as you know? 2 A As far as I know. 3 Q Okay. And let's see here. I think you 4 mentioned, right before we went on break, your 5 attendance record. Let's walk through that a 6 little bit here. 7 8 REPORTER'S NOTE: (At this point, instrument was 9 marked for identification by the Reporter as 10 Defendant's Exhibit Number 3, after which, the 11 deposition continued, as follows:) 12 13 Q (continued by Ms. Creveling) Okay. Let 14 me hand you what I've marked as Defendant's 15 Exhibit 3. It's a document called a "Total 16 Points Detail," and that's for the period of 17 July -- basically mid July '05 through the end 18 of '05. Tell me, if you, as an employee at 19 MasterBrand, wanted to check to see how many 20 points you had at any given time, would you be 21 able to do that? 22 A At any given time? 23 Q Let's say you're just curious where you</p>	<p>1 tech. 2 Q The support tech could also tell you how 3 many points you had? 4 A They had a copy on the case. 5 Q Okay. Was that Linda for you? 6 A Yes. 7 Q Okay. And so again when you checked your 8 points, who did you check with? 9 A Linda. 10 Q Why did you check on your points? 11 A To see how many there was. 12 Q Were you concerned? 13 A Not overly concerned; just to keep up 14 with it. 15 Q Okay. Do you recall whether you checked 16 before your December '05 absence? 17 A You're talking about immediately before? 18 Q At anytime between July and December of 19 '05. 20 A Yes. 21 Q Okay. And did you check after your 22 return to work from your leave of absence? 23 A No.</p>

21 (Pages 81 to 84)

Page 85	Page 87
<p>1 Q Did Linda give you any document showing</p> <p>2 your points?</p> <p>3 A I looked at hers.</p> <p>4 Q Okay.</p> <p>5 A It was all -- everybody was on the same</p> <p>6 page.</p> <p>7 Q Okay. Were you looking at a points</p> <p>8 detail like Exhibit 3? Obviously we've taken</p> <p>9 out all the other employee names. But is this</p> <p>10 the type of document you would have looked at?</p> <p>11 A Something like that. If that wasn't it,</p> <p>12 it was something like it.</p> <p>13 Q Okay. At the times that you were</p> <p>14 checking your points, how many points do you</p> <p>15 recall having?</p> <p>16 A I don't remember.</p> <p>17</p> <p>18 REPORTER'S NOTE: (At this point, instrument was</p> <p>19 marked for identification by the Reporter as</p> <p>20 Defendant's Exhibit Number 4, after which, the</p> <p>21 deposition continued, as follows:)</p> <p>22</p> <p>23 Q (continued by Ms. Creveling) Let me have</p>	<p>1 Exhibit 3 indicated that you had been tardy and</p> <p>2 you just simply couldn't remember whether or not</p> <p>3 you had actually been tardy on August 24. Do</p> <p>4 you still agree with that response?</p> <p>5 A Yes.</p> <p>6 Q Okay. And Request for Admission number 2</p> <p>7 simply asks you to admit that you got a half a</p> <p>8 point for that tardy on August 24. And you</p> <p>9 admitted that Exhibit 3 indicated that, in fact,</p> <p>10 the company had given you a half a point, and</p> <p>11 that the Attendance Policy, which is Exhibit 1,</p> <p>12 called for you to get a half a point. Are you</p> <p>13 still in agreement with that response?</p> <p>14 A For number 2?</p> <p>15 Q For number 2.</p> <p>16 A Yes.</p> <p>17 Q Okay. What I'm going to do, I'm going to</p> <p>18 start making a list here of the points so we can</p> <p>19 add it up and you and I can understand where we</p> <p>20 agree or disagree on your points total. So</p> <p>21 we've got August 24, '05, and we have a half a</p> <p>22 point. Let's take a look at Request for</p> <p>23 Admission number 3, it asks you to admit that</p>
Page 86	Page 88
<p>1 you take a look at Exhibit 4, which are your</p> <p>2 responses to our Request for Admissions. And</p> <p>3 I'll ask you just to glance through those and</p> <p>4 let me know if you feel any changes are needed</p> <p>5 to any of these responses.</p> <p>6 A Okay. So it's saying on December --</p> <p>7 BY MR. ARNOLD: I want to make sure --</p> <p>8 may I talk with my client for a minute?</p> <p>9 BY MS. CREVELING: Sure.</p> <p>10</p> <p>11 REPORTER'S NOTE: (At this point, an</p> <p>12 off-the-record discussion was had, after which,</p> <p>13 the deposition continued, as follows:)</p> <p>14</p> <p>15 Q (continued by Ms. Creveling) Let's take</p> <p>16 a look at Request for Admission number 1. And</p> <p>17 you'll need to refer to Exhibit 3 while we're</p> <p>18 doing this, as well. Okay? Request for</p> <p>19 Admission number 1 asks you to admit that you</p> <p>20 were tardy on August 24. If you look at Exhibit</p> <p>21 3, it shows August 24, '05, that you were tardy</p> <p>22 for less than two hours and you received a half</p> <p>23 a point. And in your response you admitted that</p>	<p>1 you were absent on September 1, 2005. And again</p> <p>2 if you refer back to Exhibit 3, it shows an</p> <p>3 absence on September 1, 2005 and that you were</p> <p>4 assessed two points. And in your response you</p> <p>5 admitted that that's what the document</p> <p>6 accurately showed and you just couldn't remember</p> <p>7 whether or not you had been absent on September</p> <p>8 1. Do you still agree with that response?</p> <p>9 A Yes.</p> <p>10 Q Okay. And Request for Admission number</p> <p>11 4, again referring to the September 1 absence,</p> <p>12 it asks you to admit that in accordance with the</p> <p>13 Attendance Policy, you got two points, and you</p> <p>14 admitted that. Do you still agree with that</p> <p>15 response?</p> <p>16 A Yes.</p> <p>17 Q Okay. Request for Admission number 5</p> <p>18 referred to a tardy on September 8, 2005. And</p> <p>19 again if you refer back to Exhibit 3, it shows a</p> <p>20 tardy of less than two hours on September 8,</p> <p>21 2005. And you admitted that that's what Exhibit</p> <p>22 3 showed, and you couldn't remember whether or</p> <p>23 not you were really tardy on that day. Do you</p>

Page 89	Page 91
<p>1 still agree with that response?</p> <p>2 A Yes.</p> <p>3 Q Okay. Let's see here. So we've got --</p> <p>4 going back to our list, we've got an absence on</p> <p>5 9/1 '05 for which you received two points. And</p> <p>6 we have then a tardy on September 8th of 2005</p> <p>7 for which you received a half a point. Request</p> <p>8 for Admission number 6 asks you to admit that in</p> <p>9 accordance with the Attendance Policy, you got a</p> <p>10 half a point on September 8, 2005, and you</p> <p>11 admitted that. Do you still agree with that</p> <p>12 response to number 6?</p> <p>13 A Yes.</p> <p>14 Q Okay. Request for Admission number 7</p> <p>15 referred to an absence on December 8, 2005. And</p> <p>16 again if you refer back to Exhibit 3, you'll see</p> <p>17 that it shows an absence on December 8, 2005,</p> <p>18 and you admitted that that's what the document</p> <p>19 showed, and that you couldn't remember whether</p> <p>20 or not you had been absent that day. Do you</p> <p>21 still agree with that response?</p> <p>22 A Yes.</p> <p>23 Q Okay. And as a result of that absence,</p>	<p>1 agree with me on that?</p> <p>2 A Is that how many that MasterBrand</p> <p>3 assessed me?</p> <p>4 Q Correct.</p> <p>5 A Yes.</p> <p>6 Q So we're in agreement with that?</p> <p>7 A Yes.</p> <p>8 Q And are you in agreement that that is a</p> <p>9 correct tally of points under the Attendance</p> <p>10 Policy through December 16, 2005?</p> <p>11 A I'm not sure.</p> <p>12 Q Okay. Let me mark my little tally sheet</p> <p>13 here. That might help us.</p> <p>14</p> <p>15 REPORTER'S NOTE: (At this point, instrument was</p> <p>16 marked for identification by the Reporter as</p> <p>17 Defendant's Exhibit Number 5, after which, the</p> <p>18 deposition continued, as follows:)</p> <p>19</p> <p>20 A What do you mean, "correct?" If that's</p> <p>21 what they assessed?</p> <p>22 Q (continued by Ms. Creveling) Well, it's a</p> <p>23 two part question. Let me ask you if you agree</p>
Page 90	Page 92
<p>1 you got two points per the Attendance Policy.</p> <p>2 You also admitted to that. Any disagreement</p> <p>3 with that response to number 8?</p> <p>4 A No.</p> <p>5 Q Okay. And Request for -- let's update</p> <p>6 our list here. We have an absence on December</p> <p>7 8, '05, two points. Request for Admission</p> <p>8 number 9 refers to an early departure from work</p> <p>9 on December 16, 2005. Again if you refer to the</p> <p>10 second page of Exhibit 3, you'll show that leave</p> <p>11 early. Do you still agree with your response to</p> <p>12 Request for Admission number 9?</p> <p>13 A Yes.</p> <p>14 Q Okay. And Request for Admission number</p> <p>15 10 asks you to admit that in accordance with the</p> <p>16 Attendance Policy, you got a half a point for</p> <p>17 that leave early. Do you still agree with your</p> <p>18 response to Request for Admission number 10?</p> <p>19 A Yes.</p> <p>20 Q Okay. I would like to stop at this</p> <p>21 minute then and just total up the points that</p> <p>22 we're in agreement with so far. I come up with,</p> <p>23 as of December 16, 2005, 5.5 points. Do you</p>	<p>1 that that's what they assessed you through</p> <p>2 December 16, 2005?</p> <p>3 A Yes.</p> <p>4 Q Okay. And do you disagree with the</p> <p>5 assessment of any of those points through</p> <p>6 December 16, 2005? I'm going to hand you</p> <p>7 Exhibit 5, which is just my shorthand notes of</p> <p>8 each day we've talked about so far and the</p> <p>9 points that you got as demonstrated by Exhibit</p> <p>10 3. I just want to know are there any of those</p> <p>11 days for which you disagree with the points?</p> <p>12 A I am not sure.</p> <p>13 Q Why are you not sure?</p> <p>14 A Because if 12/16 was when they sent me</p> <p>15 home on leave, I didn't request to leave early.</p> <p>16 They sent me home because of leave.</p> <p>17 BY MS. CREVELING: Let's take a quick</p> <p>18 break.</p> <p>19</p> <p>20 REPORTER'S NOTE: (At this point, a brief recess</p> <p>21 was taken, after which, the deposition</p> <p>22 continued, as follows:)</p> <p>23</p>

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Page 93	Page 95
<p>1 Q (continued by Ms. Creveling) While we're</p> <p>2 waiting for those copies then, let me ask you</p> <p>3 this. For the points between August 24, 2005</p> <p>4 and December 8, 2005, do you disagree with any</p> <p>5 of those points?</p> <p>6 A Are you saying do I remember those exact</p> <p>7 days?</p> <p>8 Q Well, we've already established that you</p> <p>9 don't remember those days. Any reason to</p> <p>10 believe that the time clock was inaccurately</p> <p>11 recording your time for those days?</p> <p>12 A Through the 8th?</p> <p>13 Q Yeah.</p> <p>14 A No.</p> <p>15 Q Okay. And so assuming that the time</p> <p>16 clock is correct, do you believe that the points</p> <p>17 from August 24, '05 through December 8, '05 were</p> <p>18 the correct points to assess you under the</p> <p>19 Attendance Policy?</p> <p>20 A Yes.</p> <p>21 Q Okay. I'm sorry. I can't add</p> <p>22 upside-down. So as of and including your</p> <p>23 absence on December 8, 2005, you had five</p>	<p>1 recall of the events of December 16 and what led</p> <p>2 you to go to the Hughston Clinic.</p> <p>3 A My shoulder was in pain.</p> <p>4 Q All right.</p> <p>5 A And I had to call and make an</p> <p>6 appointment.</p> <p>7 Q Okay. If you'll look back at Exhibit 2,</p> <p>8 you'll see that December 16 was a Friday.</p> <p>9 A Okay.</p> <p>10 Q And that you clocked in at 4:52 and</p> <p>11 clocked out at 12:30.</p> <p>12 A Uh-huh.</p> <p>13 Q Okay. So you were in pain while you were</p> <p>14 at work that day?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you left to go to the doctor's</p> <p>17 office?</p> <p>18 A Yes.</p> <p>19 Q Okay. And this is the sheet -- Exhibit 6</p> <p>20 is the sheet that the doctor's office gave you</p> <p>21 for being at the clinic that day; is that right?</p> <p>22 A Yes.</p> <p>23 Q Okay. And so then let's talk a little</p>
Page 94	Page 96
<p>1 points?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4</p> <p>5 REPORTER'S NOTE: (At this point, instruments</p> <p>6 were marked for identification by the Reporter</p> <p>7 as Defendant's Exhibits Numbered 6 and 7, after</p> <p>8 which, the deposition continued, as follows:)</p> <p>9</p> <p>10 Q (continued by Ms. Creveling) Let me hand</p> <p>11 you what we've marked as Exhibits 6 and 7, and</p> <p>12 let's talk a little bit about the events on</p> <p>13 December 16, 2005. Exhibit 6 is a document --</p> <p>14 Exhibit 6 is a document from the Hughston</p> <p>15 Clinic, and Exhibit 7 is a Request for Leave of</p> <p>16 Absence form. Let's look first at Exhibit 6.</p> <p>17 I'm sorry. Is your Exhibit 6 dated December 16,</p> <p>18 '05? Up in the upper corner.</p> <p>19 A Yes.</p> <p>20 Q Up in the upper left-hand corner.</p> <p>21 A Yes.</p> <p>22 Q Okay. So Exhibit 6 is from the Hughston</p> <p>23 Clinic dated December 16. Tell me what you</p>	<p>1 bit about the points that you received on</p> <p>2 December 16, 2005, and let's look at the Request</p> <p>3 for Admissions. We've established that you left</p> <p>4 work early. There's no dispute you left work</p> <p>5 early on December 16, right?</p> <p>6 A Right.</p> <p>7 Q Okay. And that you missed more than</p> <p>8 two -- I'm sorry --</p> <p>9 A No.</p> <p>10 Q It would have been less than two hours of</p> <p>11 work that day; is that right?</p> <p>12 A Right.</p> <p>13 Q We're in agreement there?</p> <p>14 A Right.</p> <p>15 Q Okay. And that leaving work early by</p> <p>16 less than two hours under the Attendance Policy</p> <p>17 would ordinarily result in the assessment of a</p> <p>18 half a point; is that right?</p> <p>19 A Yes.</p> <p>20 Q Okay. So then let's talk about that half</p> <p>21 point that you got on the 16th. Do you agree or</p> <p>22 disagree with that half point that you got?</p> <p>23 A I agree.</p>

24 (Pages 93 to 96)